

EXHIBIT 9

**DECLARATION OF LEIF PETERSON IN SUPPORT OF HUAWEI'S OPPOSITION TO
SAMSUNG'S MOTION TO PARTIALLY EXCLUDE AND STRIKE**

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

HUAWEI TECHNOLOGIES CO. LTD.,
HUAWEI DEVICE USA, INC.,
AND HUAWEI TECHNOLOGIES USA, INC.

Plaintiffs/Counterclaim-Defendants,

vs. Case No: 16-cv-02787-WHO

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC.,

Defendants/Counterclaim-Plaintiffs.

AND

SAMSUNG RESEARCH AMERICA, INC.,
Defendant

vs.

HISILICON TECHNOLOGIES CO., LTD.,

Counterclaim-Defendant.

HIGHLY CONFIDENTIAL, OF SIGHT COUNSEL ONLY

UNDER THE PROTECTIVE ORDER

VIDEOTAPED DEPOSITION OF JORGE PADILLA

June 28, 2018

Job No. 143459

1 Videographer: This is the start of media unit labelled
2 number one of the video recorded deposition of Jorge
3 Padilla, in the matter of Huawei Technologies Co limited
4 and Huawei Device USA Inc and Huawei Technologies USA
5 Inc, versus Samsung Electronics Company Limited and
6 Samsung Inc America. It's being heard in the US Court
7 Northern District of California, San Francisco and the
8 case number is 16-cv-02787-WHO.

9 This deposition is being held in the offices of
10 Quinn Emmanuel in Brussels, Belgium, on June 28th, 2018
11 on 9.29 on the monitor.

12 I am Chris Warmoll, from TSG Reporting, 747 Third
13 Avenue, 10th Floor, New York, NY 10017. The Court
14 Reporter is Karen Crehan in association with TSG
15 Reporting. Would counsel please introduce yourselves.
16 Mr Pease: Thomas Pease from Quinn Emmanuel and with me is
17 Paul Zeineddin.

18 Mr Giardina: I am from Sidley Austin on behalf of Huawei
19 and Justin Coombs from Compass Lexicon.

20 Videographer: Will the Court Reporter please swear in the
21 witness.

22 THE WITNESS DR JORGE PADILLA WAS SWORN AND EXAMINED BY MR
23 PEASE AS FOLLOWS:

24 Videographer: Thank you, we may begin.

25 Q. Morning Dr Padilla, would you mind stating your full

1 licensor, correct?

2 A. Correct.

3 Q. And those are legal terms that courts have used on
4 assessing FRAND conduct, is that right?

5 A. That's correct to the best of my understanding.

6 Q. Are you aware of any aspect of economics that involves
7 analysing whether it licensee or licensor is willing or
8 unwilling?

9 A. I don't think there is a paper in economics that is
10 titled "willing licensees" or "willing licensors", but
11 there is a very extensive literature on bargaining and
12 their concepts in bargaining theory that are similar to
13 the matter of willing licensor or unwilling licensee --
14 or licensor. We have notions such as take it or leave
15 it offers. We have models that tell us when parties are
16 engaged in negotiation. We have models of refusals to
17 negotiate. So there is literature in economics that
18 helps you understand under which conditions one party
19 would be willing and which party could be characterized
20 as unwilling.

21 Q. And did you rely on that literature, that type of
22 analysis in formulating any of the opinions you are
23 offering in this case?

24 A. So I set out very clear clearly in my first report, I
25 think, the three criteria that I would use that I think

1 are compatible with economic theory and understanding
2 for how to discriminate between a willing licensor and a
3 willing licensee, and I think they are set out at the
4 beginning of the section in which I review the
5 negotiations between Huawei and Samsung.

6 Q. Do you have any background in electrical engineering or
7 electronics engineering?

8 A. No.

9 Q. And I take it you are not familiar with the technical
10 aspects of the 3G or 4G technology that's at issue here?

11 A. No, I participated in the cases concerning this industry
12 since 2005 and I have been involved in numerous cases
13 but I am not an electrical engineer, so my knowledge is
14 that of somebody that reads about these things and tries
15 to understand what engineers say.

16 Q. Could you look - did you look at any of the Samsung or
17 Huawei patents that are at issue in this case?

18 A. No.

19 Q. I am going to take a step back. In this case, you
20 understand that Samsung and Huawei have both asserted
21 declared essential patents against each other?

22 A. Correct.

23 Q. And they are both contending that the other party
24 infringes those patents, do you understand that?

25 A. I understand that.

1 contributions was to discuss whether they could be used
2 as a proxy for value among other potential proxies for
3 value.

4 Q. And can SEP contributions be used as a proxy for value
5 of a patent portfolio?

6 A. I think as a profession, as economists, we are
7 struggling to understand or to develop good proxies for
8 value. We have over the years developed some measures,
9 forward citations with -- this case is one of them.
10 There is some unsatisfaction about the usefulness of
11 forward citations or patent counting and so we are all
12 looking for different ways in which we could approximate
13 the value. Contributions is one of the notions that has
14 been put forward, and, you know, it has has its pros and
15 its cons and its problems as well.

16 And people are trying to come with new ideas as to
17 how to proxy value, because it's a difficult exercise,
18 and so, you know, I think that my view on contributions
19 is set out in my report, is just one additional proxy
20 that you may want to consider. And my view at this
21 stage is that since there is no perfect proxy, all of
22 these are useful and potentially informative, but all of
23 them should be taken with a pinch of salt.

24 Q. Just generally what are the pros and cons of
25 contributions analysis, just generally?

1 802.11 Wi-Fi standards?

2 A. That's correct. Yeah, I believe that that's correct.

3 Q. And Huawei has Standard Essential Patents for 80.211,
4 correct?

5 A. I believe so.

[REDACTED]

21 Q. You would agree that Wi-Fi SEPs have value, correct?

22 A. They have some value, of course.

23 Q. I am going to hand you what's been marked as Padilla
24 Exhibit 8, a document previously marked as Cheng Exhibit
25 723.

1 another, no licensee is going to be absolutely identical
2 to another. Secondly, because opining the contrary
3 creates problems if you accept that FRAND is not a
4 number but a range.

5 Q. And so before, in the example we talked about, I
6 proposed that suppose Apple pays one cent and Samsung
7 pays \$10 -- let's suppose Apple pays one cent and
8 Samsung pays \$30; in your view if Samsung can continue
9 to compete, even with that additional \$30 cost, it's not
10 the subject of non-discrimination for FRAND purposes?

11 A. That's correct, and that is my view. But I think it's
12 consistent with the view of many others. I think that I
13 am not alone here, including the seminal paper in this
14 area by Dan Swanson, and Bill Baumol, Anti-Trust Law
15 Journal, 2005. They have exactly the same opinion as
16 far as I recall.

17 Q. Now when Huawei first publicized its 1.5% so-called
18 standard rate, it characterizes just that, a standard
19 rate that would apply to everyone, correct?

20 Mr Gardinia: Objection to form and foundation.

21 A. I don't recall how it was characterized, I think that
22 people that were publicizing rates for LTE, typically
23 meant caps, maximum rates at the time, but I don't know
24 exactly how Huawei presented it.

25 Q. But you are not aware of Huawei saying "well, we will

CERTIFICATE OF COURT REPORTER

I, Karen Crehan, an Accredited Court Reporter, hereby certify that the testimony of the witness, Dr Jorge Padilla, in the foregoing transcript taken on 28th June, 2018, as recorded by me in machine shorthand was thereafter transcribed by me; and that the foregoing transcript is a true and accurate verbatim record of the said testimony.

I further certify that I am not a relative, employee, counsel or financially involved with any of the parties to the within cause, nor am I in any way interested in the outcome of the within cause.

Karen Crehan

Dated: July 3, 2018